

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

AARON ROGERS,

Petitioner,

v.

Case No. 2:05-cv-120
HON. R. ALLAN EDGAR

GERALD HOFBAUER,

Respondent.

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MEMORANDUM AND ORDER

Petitioner Aaron Rogers (“Rogers”), a state prisoner in the custody of the Michigan Department of Corrections, has filed a petition for writ of habeas corpus under 28 U.S.C. § 2254. Respondent moves for summary judgment to dismiss the habeas petition on the ground that it is time-barred by the statute of limitations provided in 28 U.S.C. § 2244(d)(1). [Doc. No. 16].

The habeas petition and the respondent’s summary judgment were referred to Magistrate Judge Timothy P. Greeley for a report and recommendation pursuant to 28 U.S.C. § 636(b)(1)(B) and W.D. Mich. LCivR 72.1(d). On October 6, 2006, the Magistrate Judge submitted his report and recommendation. [Doc. No. 31]. The Magistrate Judge recommends that the respondent’s summary judgment motion be granted and that the habeas petition be dismissed on the ground that it is time-barred by the statute of limitations provided in 28 U.S.C. § 2244(d)(1)(a). Petitioner Rogers has not timely filed an objection to the report and recommendation.

After reviewing the record, the Court **ACCEPTS and ADOPTS** the report and recommendation pursuant to 28 U.S.C. § 636(b)(1) and W.D. Mich. LCivR 72.3(b). The Court concludes that the respondent's motion for summary judgment [Doc. No. 16] is well taken and it is **GRANTED** under Fed. R. Civ. P. 56 and Rule 11 of the Rules Governing Section 2254 Cases in the United States District Courts. The petition for writ of habeas corpus shall be **DENIED and DISMISSED WITH PREJUDICE** on the ground that it is time-barred by the statute of limitations provided in 28 U.S.C. § 2244(d)(1)(a).

If Rogers should timely file a notice of appeal, it will be treated as an application for a certificate of appealability which shall be **DENIED** pursuant to 28 U.S.C. § 2253(c)(2) and Fed. R. App. P. 22(b)(1) because the Court finds that he has not made a substantial showing of the denial of a constitutional right.

A separate judgment will enter.

SO ORDERED.

Dated: December 1, 2006.

/s/ R. Allan Edgar

R. ALLAN EDGAR
UNITED STATES DISTRICT JUDGE